उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(33)

मामला क्रमांक Cr. App. 260 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.260/2002

APPELLANT Bhadru s/o Sudru, age 22 years, R/o Village Palanar, P.S. Kodenar, District Bastar(Jagdalpur) C.G.

Versus

RESPONDENT The State of Chhattisgarh, Through Police of P.S. Frezerpur(Parpa), District, Bastar(Jagdalpur) C.G.

CRIMINAL APPEAL u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C BHADOO, J, & HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(16.11.2007)

L.C. Bhadoo, J:-

Shri R.N. Jha, Counsel for the appellant.

Shri Ashish Shukla, Government Advocate for the State.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 10.01.2002, passed by the Special Judge(under S.C.S.T. Prevention of Atrocities Act) and Additional Sessions Judge, Jagdalpur in Sessions Trial

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(34)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

No.195/2001, whereby and where-under, the learned Special Judge after holding the accused/appellant-Bhadru guilty for commission of the offence punishable under Section 302 of IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for 1 year, and also convicted him under Section 397 of IPC and sentenced to undergo R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months. However, he acquitted the co-accused- Suklo and Satru. Both the sentences of the accused/appellant were directed to run concurrently.

Case of the prosecution in brief is that at about 11.00 am on 30.12.2000, one Prem Prakash gave merg intimation in Police Station – Frezerpur that dead body of a person is lying in the field of Mohan Joshi near the railway track. He along with village Sarpanch- Gorakhnath, Secretary- Ganpat Panchkaran, Patel Ghasiram had seen the dead body of that unknown person, aged about 30 years. The said merg intimation was registered at No.75/2000 under Ex. P/10. Sub Inspector-Ratnesh Mishra left for the scene of occurrence and after giving notice (Ex.P/14) to the Panchas, prepared inquest (Ex.P/15) on the body of the deceased. He sent a letter of request to Dr. Smt. Sarita Mohbia for conducting postmortem, on which, Dr. Smt.Sarita Mohbia came on the spot and conducted the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(35)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

postmortem on the body of the deceased. She prepared report Ex.P/11. She opined that the cause of death was asphyxia as a result of strangulation and death was homicidal in nature. During investigation, Sub Inspector- Ratnesh Mishra, on 14.12.2000, seized slippers and a piece of black belt under Ex.P/16. Site plan under Ex.P/17 was prepared. The Investigating Officer came to know that the deceased-Ratan left the house with torch, two shirts, lungi and Rs.500/-, saying that he is going to Jagdalpur, but thereafter, whereabouts of Ratan were not known. During further investigation, it was found that Sudru, father of the accused/appellant-Bhadru met Sudri, mother of the deceased in the market of Raikot, where Sudru asked Sudri as to why they are not enquiring about Ratan. Ratan has been murdered in Tokapal and the bag of Ratan has been brought by his son-Bhadru, on which, Sudri returned to her house and informed it to her husband-Gorakhnath and her son-Padam. When the deceased- Ratan left his house, he was wearing one blue colour shirt, one full pant, black belt and sponge slippers. He was also carrying one plastic bag along with 2 shirts, lungi, shawl and sweater. Gorakhnath and Padam started searching Ratan. Sudri went to the house of Bhadru and enquired from him about Ratan. Bhadru told her that Ratan left for Jagdalpur and he returned from the railway station. Thereafter, Gorakhnath and Padam

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

went to Tokapal and enquired from the Kotwar and Sarpanch. They went to the Police Station, where they saw the clothes, slippers and photographs and identified those articles to be of Ratan. Thereafter, Bhadru was taken into custody. On enquiry, he gave memorandum Ex.P/1. Based on the memorandum, one shawl, one terrycot full sleeves shirt, one used full shirt, lungi were seized under Ex P/4. Two wooden pieces of Tendu were also seized at the instance of Satru and Suklu. Based on that crime No.10/2001 under F.I.R. Ex.P/18 was registered. The accused persons were arrested and on the basis of memorandum of Bhadru, piece of belt was seized and articles were sent for chemical examination to the F.S.L. from where, report Ex.P/24 was received. It was mentioned in the report that both the pieces of the belt were of the same belt.

After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur, from where the learned Special Judge and Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined as many as 11 witnesses. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, in which, each of the accused denied the material appearing against them in the

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(37)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

prosecution evidence and stated that they are innocent and have been implicated in a false crime.

After hearing the counsel for respective parties, the learned Special Judge and Additional Sessions Judge convicted and sentenced the accused/appellant –Bhadru as aforementioned, whereas acquitted the co-accused-Suklo and Satru.

We have heard Shri R.N.Jha, learned counsel for the accused/appellant and Shri Ashish Shukla, learned Government Advocate for the State.

Shri Jha has not disputed the homicidal death of the deceased-Ratan. Moreover, Dr. Sarita Mohbia (PW-6), who conducted the postmortem on the body of Ratan on 14.12.2000, has stated that there was a mark of belt on the neck of the deceased, a ligature mark of dark colour on the neck, an abrasion on the knee of right leg, a ligature mark on the left side of the neck. The cause of death was asphyxia, as a result of strangulation and death was homicidal in nature. The postmortem report is Ex.P/11. In view of the above medical evidence and postmortem report, it is established that the death of Ratan was homicidal in nature.

As far as the complicity of the accused/appellant in crime in question is concerned, there is no ocular or directed evidence in this case. The conviction rests on the ~~basis of~~ circumstantial

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(38)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

evidence. The prosecution has tried to establish the crime against the accused/appellant on the basis of following circumstances:

1st circumstance: that the deceased was last seen alive in the company of the accused/appellant in the market of Tokapal before his death.

2nd circumstance : that the bag of the deceased-Ratan and the pieces of belt of Ratan were seized at the instance of the accused/appellant-Bhadru.

3rd circumstance: that as per F.S.L. report Ex.P/24, the pieces of the belt, which were seized from the place of occurrence and at the instance of the accused/appellant, were the pieces of same belt.

As per the settled law, in order to rest the conviction on circumstantial evidence, as has been laid down by the Apex court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.**[1] it is to be established that:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a

[1] (1994) 2 SCC 220

(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

Now coming to the first circumstance, in order to establish this circumstance, the prosecution has examined 2 witnesses namely-Aasman (PW-8) & Ramdev (PW-9). PW-8-Aasman, in his evidence has stated that Ratan was known to him, who has died. The accused/appellant-Bhadru is also known to him. He does not know how Ratan died. He saw Ratan in the market. Bhadru was with him. He had a talk with Ratan for some time, at that time, Ramdev was also with him. Ratan asked him that how he has come to the market, then he

(10)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

replied that he has come to purchase vegetables. At that time, Ratan was holding a bag. In the cross-examination he has stated that at about 4.00 pm, he returned to his village. When he was returning to the village, he did not see Ratan and Bhadru.

PW-9- Ramdev has also stated that the deceased- Ratan and the accused/appellant –Bhadru are known to him. Aasman was with him. Ratan and Bhadru were together. Bhadru was holding the bag. Ratan enquired from him that how he has come to the market, on which, he replied that he has come to purchase vegetables. Thereafter, Ratan and Bhadru went away and he along with Aasman returned to the house.

Based on the last seen theory, in order to fasten the responsibility on the shoulder of the accused/appellant, as per the settled law, prosecution is required to establish that the time gap between when the body of the deceased was seen and when the deceased was seen alive with the accused/appellant must be small and there must be proximity between the two. The time when the dead body was found and the accused/appellant and the deceased were seen together, must so small that there is no possibility of coming any one between them for commission of the crime. In other words, the time when the deceased was seen alive along with the

411

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused/appellant and the body was found, must be so proximate to the death that there is no possibility of drawing any inference of innocence of the accused/appellant and for this, we are fortified in our view by the judgment of the Apex Court rendered in the matter of ***Bodhraj alias Bodha and others Vs. State of Jammu and Kashmir, (2002) 8 SCC 45*** as also the judgment of the Apex Court in the matter of ***State of Goa Vs. Sanjay Thakran & Another, 2007 (4) SBR 321***. In this case, the Apex Court has held that the time gap between the accused persons seen in the company of the deceased and detection of crime would be a material consideration for appreciation of evidence. The time gap must be so small that a possibility of any person other than the accused becomes impossible.

If the above principle is applied in the present case, it is clear that the prosecution has not stood to the test laid down by the Apex Court in the above judgments because both the witnesses have not stated time and date when they saw the deceased in the company of the accused/appellant in Tokapal market. It has also not come in the evidence that what much time gap was between when the accused/appellant and the deceased were seen in Tokapal market and the body of the deceased was seen, therefore, the evidence of these 2 witnesses

(412)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 10	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

is not clinching and clear in order to fasten the criminal liability on the accused/appellant based on last seen theory.

It is also unsafe to draw the inference of guilt of accused based on last seen, unless that fact along with other material on record establish the involvement of the accused in the murder.

As far as recovery of the clothes and bag of the deceased at the instance of the accused/appellant-Bhadru is concerned, PW-1- Patiram before whom the memorandum is said to be given by the accused/appellant and before whom the above property was said to have been seized at the instance of the accused/appellant under Exs.P/4 and P/6, has turned hostile. He has stated that nothing was seized from Bhadru in his presence. No information was given by Bhadru to the police and he has stated that it is incorrect to say that the bag of the deceased was recovered at the instance of Bhadru. Moreover, as per the prosecution case, Sudru- father of the accused/appellant had already informed Sudri-mother of the deceased-Ratan and wife of Gorakhnath that the bag of the deceased has been brought by his son-Bhadru. If this fact was already disclosed by the father of the accused/appellant to the mother of the deceased, then where was the question of memorandum and recovery of the bag at the instance of the accused/appellant? This fact was already known to the father of the accused/appellant and he disclosed to the mother of Ratan,

(43)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 11	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

thereby it cannot be said that the fact was within the exclusively knowledge of the accused/appellant and at his instance only the bag was recovered. Even father of accused Sudru has not been examined. Moreover, PW-1-Patiram has turned hostile. Regarding memorandum and recovery, no other independent witness has been examined. PW-4-Dukur @ Dakru has stated that Bhadru brought the bag from his house and belt from the field and produced it in the Tokapal Police Station. He is a witness of memorandum. He has not stated that the accused/appellant gave memorandum before him; therefore, evidence of this witness is of no use. The belt is said to have been recovered from the agricultural field. As far as the bag is concerned, PW-8- Aasman has stated that Ratan was carrying the bag in the market, whereas, PW-9- Ramdev has stated that Bhadru was carrying the bag in the market. The incident took place prior to 13.12.2000, whereas, the memorandum was given on 29.1.2001, about 1 ½ months after the incident, therefore, on account of these infirmities, the memorandum and recovery of the bag and belt at the instance of the accused/appellant becomes doubtful. On the basis of this circumstance, the accused/appellant cannot be connected with the crime in question.

As far as the 3rd circumstance is concerned, recovery of the belt at the instance of the accused/appellant is doubtful;

XI-HC—78

(114)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 12	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

therefore, FSL report Ex.P/24 is also of no use to connect the accused/appellant with the crime in question.

In the result, prosecution has utterly failed to connect the accused/appellant in crime in question based on the circumstantial evidence and the evidence adduced by the prosecution does not stand up to decisions laid down by the Apex Court in the catena of judgments regarding fastening the criminal liability on the accused/appellant based on circumstantial evidence.

In the result, the conviction and sentences imposed upon the accused/appellant under Sections 302 and 397 of IPC cannot be sustained. Appeal succeeds. The accused/appellant is acquitted of the above charges and the sentences imposed upon him are set aside.

It is stated the accused/appellant is in detention since January, 2001, therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

sunita